85-815

(1)

Supreme Court, U.S.
FILED
NOV 6 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

No. _____

Linda and Dennis Davis,
Petitioners:

-vs-

The U.S. Department of Education,
Wayne State University et al,
Respondents:

PETITION FOR WRIT OF MANDAMUS - PROHIBITION TO THE UNITED STATES COURT OF APPEALS FOR THE SIX CIRCUIT AND THE EAST SOUTHERN DISTRICT COURT OF MICHIGAN.

Dennis Davis
1146 Selden Ave, Suite 129
Detroit, Michigan 48201
Phone: (313) 831-1925

25pp.

QUESTION PRESENTED

That given the circumstances of the case at bar, was it proper for the panel not to exercise any superintending control it may have over the District Court and Judges to compel them to take some action to adjudicate this case on the merits of the defendant's brief, when the Judge stated he was going to do so in the October 29th, 1984 Order then preparing a 11/19 Order denying Plaintiff's prose representation.

TOPICAL INDEX

	PAGE
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISION INVOLVED . .	2
STATEMENT OF THE CASE	2
REASON FOR GRANTING WRIT.	5
APPENDIX	8
1. Authorization for Mr. Davis to proceed in this matter.	8
2. Order of the U.S. District Judge Philip Pratt of the U.S. District Court, East Southern District of Michigan stating he was going to take some action to adjudicate the case.	10
3. Order of the U.S. District Judge Philip Pratt of the East Southern District Court of Michigan refusing to take action to adjudicate the case on the merits.	12
4. Order of the Six Circuit Court of Appeals Judges, Chief Judge Lively Merrit and Jones Circuit Judges affirming an order the District Judge didn't make. . .	14
5. Order of the State of Michigan Supreme Court to support the findings that the U.S. Supreme Court is the only court that can grant such relief	17

INDEX TO AUTHORITIES

Decisions

	Page
State vs. District Court 89 F. 2d 5 Mont. 1938	5

STATUES

	Page
28 U.S.C. 1651	2
42 U.S.C. 1983 and 1985	5

PETITION FOR WRIT OF MANDAMUS

The Petitioners herein seek this honorable court to issue a Writ of Mandamus-Prohibition in the alternative to Judge Philip Pratt U.S. District Judge East Southern District Court of Michigan and Chief Judge Lively Circuit Court Judge, Merrit and Jones.

Opinion Below

The opinion of the District Court Judge hasn't been rendered in this matter but his handling and disposition of said case appear in Appendix 2 and 3. The opinion of the Court of Appeals and its disposition of the proceeding in the District Court appear in Appendix 4.

JURISDICTION

That on 8/25/85, The Court of Appeals entered its order denying Application for Leave to Appeal and dismissing Appeal. The petition for Writ of Mandamus was filed within 90 days of that date. The Jurisdiction of this court is invoked under Title 28, United States Code, Section 1651.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment XIV Section I. Nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

That on or about May 10th, 1984, a copy of the complaint was sent to the U.S. Attorneys Office for authorization to commence this action in the District Courts to determine if I was entitled to

redress as a result of his wife's deprivation of benefits provided under Title IV of the Higher Education Act as amended. A copy of which is hereto attached and annexed as appendix (1).

.2. That on 7/29/84, the Respondents filed a brief stating that the Petitioners received the benefits pursuant to said policy detailed in the brief and the cancellation procedure described therein is universally applied to all students...

.3. That at the hearing the Respondent would not let me present my issues to the court and shortly thereafter, received an order stating that if the Plaintiffs don't retain counsel within twenty days he would decide the case on the Defendant's brief. A copy of which is hereto attached and annexed as Appendix (2).

.4. That the Respondent failed to decide the case on the Defendant's brief as stated and neglected to prepare an order telling Ms. Davis she could proceed with her cause provided an appearance was filed within twenty days and dismissed the case for lack of prosecution. A copy of which is hereto attached and annexed as Appendix (3).

.5. That on 8/20/85 the Petitioners filed a joint appendix in the cause pursuant to the briefing schedule received from the case supervisor, Judy King. To consolidate the 36th District Court of the State of Michigan case with this case.

.6. That on 8/25/85, the Petitioners received an order from the Court of Appeals affirming an order the District Court didn't make, which is detailed in Appendix (4)

Reason for Granting Writ

The Writ should be granted because in State v District Court 89 F... 2d 5 Mont. 1938. The court held, that Mandamus is. That if a court has jurisdiction and thus denies a litigant the right to be heard on the merits, and refuse to determine the facts, it has failed to perform a duty imposed upon it by law and Mandamus will lie. That the facts of the case clearly reveal that the District Court has not taken any action to adjudicate this matter on the merits. The Court of Appeals, in continuation of same, not considering the merits of the Application for Leave to Appeal, informal brief, Joint Appendix, Defendant's brief and based its position on orders that didn't exist.

42 U.S.C. 1983, 1985 state in

relevant part: if two or more persons in any state or territory conspire for the purposes of depriving either directly or indirectly the citizens the equal protection of the laws. That if one or more persons engage therein due or cause to be done any act in furtherance of the object of such conspiracy, thereby another is injured in his person, may have an action against any one or more of the conspirators.

This court and cause is the only court that can grant such relief due to the course of the proceedings and it arising out of an alledged deprivation of an act of Congress and non performance of duty on behalf of Respondents. As it relates to the case, a copy of which is hereto attached and annexed in Appendix 5. The Respondents' conduct described herein

is irresponsible conduct that erodes the public confidence in the fair and impartial administration of justice. That the departments involved in the handling of the case, the formation of its orders and responses, dictate a callous disregard of the standards governing their conduct as public servants.

The Petitioners are entitled to know if what stated in the Defendant's brief was the law at the time and was equally applied to all students. Or they are entitled to the relief demanded in the summons and any other relief the court deems just and equitable under the circumstances, as a matter of course.

Signature_____
Linda Davis

_____
Dennis Davis, 1146 Selden
Suite 129, Detroit, Mich.
48201, Phone (313) 831-1925

APPENDIX

Appendix (1)

U.S. Department of Justice

Telephone: 313/226-4316

United States Attorney
Eastern District of Michigan

Federal Bldg & U.S. Courthouse
231 W. Lafayette, 8th Floor
Detroit, Michigan 48226

May 22, 1984

Mr. Dennis Davis
1146 Selden, Suite 129
Detroit, Michigan 48201

Dear Mr. Davis:

I am returning the papers you mailed or delivered to Mr. Mark Werder on May 21, 1984.

Should you desire to file a federal lawsuit against the Department of Education, you must file two copies of a complaint and summons with the Clerk of the Court and pay the appropriate filing fee. The Clerk is located on the first floor of the Old Federal Building.

You must also have a copy of summons and complaint served on the Department of Education in Washington, D.C., and on our U.S. Attorney's Office. The summons must indicate that the Department has 60 days

to answer the complaint. This service must be accomplished in accordance with Rule 4 of the Federal Rules of Civil Procedure.

Very truly yours,

Leonard R. Gilman
United States Attorney

L. Michael Wicks
Assistant U.S. Attorney
Chief, Civil Division

LMW:pt
Enclosures

Appendix (2)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LINDA DAVIS,

Plaintiff Civil No. 84-CV-2613-DT

-vs- Hon. Philip Pratt

UNITED STATES DEPARTMENT OF EDUCATION, et al.,

Defendants.
_____/

O R D E R

The defendant having filed a motion to dismiss plaintiff's amended complaint on August 29, 1984; the plaintiff having filed a response thereto on October 5, 1984; oral argument having not been completed on October 11, 1984 because plaintiff's representative is not licensed to practice law;

IT IS HEREBY ORDERED that plaintiff has twenty days from October 11, 1984, to find counsel otherwise defendant's motion will be considered on the briefs.

PHILIP PRATT
United States District Judge

Dated: _____

Appendix (3)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LINDA DAVIS,

Plaintiff Civil No. 84-CV-2613-DT

-vs- Hon. Philip Pratt

UNITED STATES DEPARTMENT OF EDUCATION, et al.,

Defendants.
_____/

ORDER OF DISMISSAL

This matter is before the court on defendant's motion to dismiss and plaintiff's motion for summary judgment. On October 11, 1984, oral arguments were scheduled on both motions. At that time, the court held that Mr. Dennis Davis could not appear on behalf of the plaintiff, Mrs. Linda Davis, because he was not an attorney licensed to practice law. The court held that plaintiff could proceed

with her cause provided that an appearance was filed within twenty days. No appearance having been filed on behalf of plaintiff after more than twenty days, plaintiff's case is therefore dismissed for lack of prosecution.

IT IS SO ORDERED.

PHILIP PRATT
United States District Judge

Dated: November 16, 1984

Detroit, Michigan

Appendix (4)

No. 84-1865

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Not For Publication

LINDA DAVIS,

Plaintiff-Appellant

-vs- O R D E R

UNITED STATES DEPARTMENT OF EDUCATION: WAYNE STATE UNIVERSITY,

Defendants-Appellees

/

BEFORE: LIVELY, Chief Judge; MERRITT AND JONES, Circuit Judges.

Plaintiff appeals the sua sponte dismissal of her civil action. The case has been referred to a panel of this court pursuant to Sixth Circuit Rule 9(a). Upon consideration of the briefs and the record, the panel agrees unanimously that

oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

The hearing in the district court on a motion to dismiss was adjourned before completion when the district judge discovered that Dennis Davis, the person purporting to represent the plaintiff Linda Davis, was not a licensed attorney. The district court entered an order giving Linda Davis 20 days in which to file a proper appearance and when no appearance was filed, the district court dismissed for want of prosecution. After this order of dismissal was entered, the same Dennis Davis, purporting to act as counsel for Linda Davis, filed a motion in this court for leave to appeal in forma pauperis. That motion is now before the court of appeals.

A litigant may appear in federal court

either representing herself or represented by a licensed attorney. A person not representing herself may not appear and be represented by one not licensed to practice law. Since Dennis Davis, a layman, continues to attempt to represent Linda Davis in this litigation after being advised by the district court that such representation is not permitted, the motion for leave to appeal in forma pauperis is denied, and the appeal is dismissed.

ENTERED BY ORDER OF THE COURT

_____

Clerk

Appendix (5)

SUPREME COURT

Lansing, Michigan

48909

August 19, 1983

Mr. Dennis Davis
1146 Selden, Apt. 129, Bldg. 902
Detroit, MI 48201

Re: People v Davis, No. 70157

Dear Mr. Davis:

On July 28, 1983, this office received from you a Motion for Reconsideration in the above-entitled matter. Since GCR 1963, 862.6 provides that the Court will

not entertain a motion for reconsideration of an order denying reconsideration, your papers are not acceptable for filing and are herewith returned.

Very truly yours,

CORBIN R. DAVIS,
Clerk

CRD/kle

Enclosures

cc: Rose A. Houk
Assistant Attorney General
512 Commerce Center
Lansing, MI IDMail

CERTIFICATE OF SERVICE

Dennis Davis, one of the undersigned petitioners, affirms that on the 25th day of October 1985, he did prepare and send 40 copies of the Writ of Mandamus to the Supreme Court and served 3 copies on the respondents by first class mail, with postage fully prepaid addressed as follows:

Judge Philip Pratt
740 Federal Bldg
U.S. Courthouse
Detroit, Michigan 48226

Mr. Michael J. Kiley
380 Mackenzie Hall
5050 Cass Ave
Detroit, Michigan 48202

Mr. Robert D. Martinez
U.S.. Attorney
817 Federal Bldg
U.S. Courthouse
Detroit, Michigan 48226

The Solicitor General of
the United States Department
of Justice
Washington, D.C. 20530

Judge Lively, Chief Judge
U.S. Court of Appeals
for the Six Circuit
502 Federal Bldg
Cincinnati, Ohio 45202

Judge Merrit
U.S. Court of Appeals
for the Six Circuit
502 Federal Bldg
Cincinnati, Ohio 45202

Judge Jones
U.S. Court of Appeals
for the Six Circuit
502 Federal Bldg
Cincinnati Ohio 45202

_____
Dennis Davis

_____
Linda Davis